U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 00553250

DATE: MAR. 6, 2020

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Advanced Degree Professional

The Petitioner, a clothing retailer and manufacturer, seeks to employ the Beneficiary as a market research analyst. It requests classification of the Beneficiary as an advanced degree professional under the second preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based "EB-2" immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Nebraska Service Center initially approved the petition, but subsequently withdrew his approval on the ground that the Beneficiary did not have the requisite educational credential to qualify for advanced degree professional classification because her degree was issued by an unaccredited institution. We dismissed the Petitioner's appeal, finding that the Beneficiary's degree from an unaccredited institution did not constitute an "advanced degree" as required to qualify her for advanced degree professional under section 203(b)(2) of the Act and to meet the job requirements on the labor certification.

The matter is now before us on a motion to reopen and a motion to reconsider. Upon review we will dismiss the combined motions.

I. LAW

As discussed in our previous decision, employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). Second, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

In visa petition proceedings USCIS determines whether a foreign national meets the job requirements specified in the underlying labor certification and the requirements of the requested immigrant classification. *See* section 204(b) of the Act (stating that USCIS shall approve a petition if it determines that the facts stated in the petition are true and that the beneficiary is eligible for the requested classification).

Section 205 of the Act, 8 U.S.C. § 1155, provides that the Secretary of the Department of Homeland Security may "at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204." By regulation this revocation authority is delegated to any USCIS officer who is authorized to approve an immigrant visa petition "when the necessity for the revocation comes to the attention of [USCIS]." 8 C.F.R. § 205.2(a). A director's realization that a petition was erroneously approved may constitute good and sufficient cause for revocation if supported by the record. *See Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

A motion to reopen the proceeding must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence of record at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

The regulation at 8 C.F.R. § 204.5(k)(2) defines "advanced degree," in pertinent part, as "any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate." The labor certification accompanying the instant petition states that the minimum educational requirement for the proffered position of market research analyst is a master's degree in business administration or a related field of study, or a foreign educational equivalent.[1] The labor certification asserts that the Beneficiary met this educational requirement by virtue of her master of business administration (MBA) from [redacted] University [redacted] in [redacted] California, which was granted on March 6, 2010, following completion of an academic program which ran from October 2008 to March 2010.

After initially approving the petition, the Director revoked the approval on the ground that [redacted] was not accredited by any accrediting agency recognized by the U.S. Department of Education (DoE) until August 2010, which was after the Beneficiary's course of study at the university. Since the Beneficiary's MBA program was completed at an institution that lacked national accreditation, the Director concluded that the Beneficiary's MBA did not qualify her for classification as an advanced degree professional.

In our dismissal of the appeal we rejected the Petitioner's argument that the lack of specific language in 8 C.F.R. § 204.5(k)(2) requiring an advanced degree to come from an accredited educational institution precluded a finding that such a requirement is implicit in the regulation. We cited case law holding that an agency's interpretation of its own regulations is controlling unless it was clearly erroneous or inconsistent with the regulatory language. While the Petitioner asserted that the Director's decision misapplied *Matter of Yau*, 13 I&N Dec. 75 (Reg'l Comm'r 1968), we found that this case law was referenced only to emphasize the discretionary authority of USCIS to require, for immigration purposes, that academic degrees be issued by accredited institutions. Finally, we found little merit in the Petitioner's claims that the Beneficiary's MBA is an "advanced degree" because the regulation does not specify when the educational institution must be accredited and [redacted]s

[1] The labor certification indicates that an alternate combination of education and experience is not acceptable.

accreditation just a few months after the Beneficiary's MBA was granted indicated that the institution already had the educational rigor of an accredited university. For all of these reasons we concluded that the Beneficiary did not have an "advanced degree" within the meaning of 8 C.F.R. § 204.5(k)(2), as required to meet the educational requirement of the labor certification and to qualify her for classification as an advanced degree professional under section 203(b)(2) of the Act.

A. Motion to Reopen

On motion the Petitioner has not stated any new facts or submitted any new documentary evidence. Accordingly, we will dismiss the motion to reopen.

B. Motion to Reconsider

On motion the Petitioner asserts that since there is no explicit requirement of accreditation in the definitional regulation at 8 C.F.R. § 204.5(k)(2), we should interpret the requirement as broadly as possible in the Petitioner's favor. The Petitioner cites the Supreme Court decision in *City of Rancho Park Verdes v. Abrams*, 544 U.S. 133 (2010), ruling that the "intent" of the regulation should be of prime consideration, and contends that [redacted]'s accreditation several months after the Beneficiary was awarded her MBA demonstrates that the university's standards were already at an acceptable academic level for accreditation at the time of the Beneficiary's graduation. In the Petitioner's view, therefore, the intent of the regulation to insure that a degree-granting institution be operating at accreditation-level standards was fulfilled in this case by the fact that [redacted] was formally accredited so shortly after the Beneficiary completed her studies and was awarded her MBA. We are not persuaded.

There is no evidence in the record that [redacted]'s academic standards were sufficient for accreditation by a DoE-recognized accrediting agency at any time prior to its accreditation by the Accrediting Council for Independent Colleges and Schools (ACICS) in the summer of 2010.[2] While the Petitioner suggests that [redacted]'s accreditation process began a year before its accreditation, no documentation thereof has been submitted. Nor has the Petitioner provided any details regarding exactly when the process began for [redacted] and the steps involved in its accreditation. As far as the record shows the process may not have begun until after the Beneficiary received her MBA in early March 2010. Thus, the Petitioner has not shown that we failed to properly interpret the intent of the regulation in concluding that the Beneficiary's MBA from an unaccredited institution was not an "advanced degree" within the meaning of 8 C.F.R. § 204.5(k)(2).

For the reasons discussed above, the Petitioner has not established that our dismissal of the appeal was based on an incorrect application of law or policy.

[2] The record includes a printout from The Database of Accredited Postsecondary Institutions and Programs stating that [redacted] was accredited by ACICS around July 1, 2010, though [redacted]'s chancellor states that the university was not recognized by any DoE-recognized accrediting agency until August 2010.

III. CONCLUSION

The Petitioner has not shown proper cause for us to reopen the proceeding or reconsider our prior decision, in accordance with the provisions of 8 C.F.R. § 103.5(a)(2) and (3).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.